IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 2 OF 2006

MRS.TELMA DE SOUZA GONSALVES ....Appellant

Versus

SMT.SARASWATI B.CHODANKAR AND ANR., ...Respondents

Shri J.P.Mulgaonkar,Advocate for the Appellant.

Mr. Joaquim Godinho, Advocate for Respondent No. 2

Coram:- N. A. BRITTO, J.

Date:- 5th June, 2006

P.C.

Heard Shri J. P. Mulgaonkar, the learned Counsel on behalf of the appellant/plaintiff and learned Advocate Shri J. Godinho, on behalf of the respondents/defendants.

2. This is plaintifff's Second Appeal arising from R.C.S. no. 397/89/E. The plaintiff is the co-owner of a property surveyed under no. 54/9 of Village Guirim, in which the defendants have their house. The defendant no.2 who is the son of defendant no.1 has been declared to be a Mundkar in respect of the said house, though it is stated that a revision is now pending before the Administrative Tribunal against the said order declaring defendant no.2 as a Mundkar of the said house. The plaintiff did not file the suit for the eviction of the defendants from the said house but with the allegation that the defendants had constructed a room in January 1989 to the said existing house, a fence in May, 1989, and a structure/bathroom in June 1989, filed a suit on 05.10.1989 for demolition of the said structures and restoration of possession of the land occupied by the said structures/fence. The suit came to be resisted by defendant no.2

alone who pleaded that the said structures/fence were constructed by defendant no.2 with the consent of the father of the plaintiff in the year 1976. In support of the case, the plaintiff examined herself and one Surveyor. As far as the allegations that the said structures/fence were constructed in the manner alleged by the plaintiff, the plaintiff examined no other witness.

On the other hand, the defendant no.2 examined himself and the Sarpanch of the Village Panchayat and amongst many documents, produced the consent given by the father of the plaintiff as well as the permisson obtained by him to construct the said room in the year 1976 or thereabout. The learned Trail Court after considering oral and documentary evidence produced by defendant no.2, came to the conclusion that the plaintiff had failed to prove the allegation that the said structures/fence were erected by the defendants in a manner alleged by her.`The learned trial Court also observed that once it was held that the construction was done with the permission of the father of the plaintiff in the year 1976, was proved by the defendant no.2 and the plaintiff having failed to establish a case that the constructions were completed in the year 1989, the only issue framed had to be answered in the negative. In other words, the trial Court did not believe the case set out by the plaintiff but did accept the case set up by defendant no.2.

3. The plaintiff having carried out an appeal to the District Court, the said appeal met the fate of dismissal. The learned first appellate Court accepted the finding of the trial Court that the said structures were constructed in the year 1976 and in that light observed that the plaintiff's suit for demolition and recovery of possession was also time barred, the said structures having been constructed by defendant no.2 in the year 1976.

4. I have heard Shri Mulgaonkar, the learned Counsel on behalf of the plaintiff, at length. Both the Courts below have refused to accept the case of the plaintiff that the said structures/fence were constructed by the

defendants at a time alleged by the plaintiff. The corollary of the said finding is that both the Courts below have accpeted the claim of defendant no.2 that the said structures were constructed as claimed by the defendants, with the consent of the father of the plaintiff in the year 1976 or thereabout. These are but concurrent findings of facts rendered by the Courts below after assessing the evidence led on behalf of the parties. Shri Mulgaonkar has tried to press questions (e) and (f) of Para 14 of the Memorandum of Appeal. Considering the facts of the case of the plaintiff and the concurrent findings of facts rendered by both the Courts below, in my view, there are no substantial questions of law involved in this case. Consequently, this Second Appeal is dismissed in limine.

N. A. BRITTO, J.

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